IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1126 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO. LTD - Appellant(s)

Versus

LIMBABHAI HAKUBHAI SINDHAV LEGAL HEIRS OF DECD. VALIBEN & 5 - Defendant(s)

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Appearance :

MS MEGHA JANI for Petitioner No(s).: 1.

NOTICE SERVED for Respondent No(s).: 1, 2, 4,5.
DELETED for Respondent No(s).: 3.
MS KIRAN D PANDEY for Respondent No(s).: 6.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 23/08/2005

ORAL JUDGMENT

Present appeal is preferred against the judgment and award passed by the Motor Accident Claims Tribunal, Rajkot, passing the order below Exh.7 in M.A.C.P.No.1348

of 2002 on 6th of April, 2004, in exercise of powers under Section 140 of the Motor Vehicles Act, 1988.

2.The facts leading to the present appeal can be narrated thus:

2.1 That one Valiben Hakubhai Sindhav met with an accident on 8th November, 2002 while, she was walking on road and succumbed to the injuries. According to the claimants, the deceased was knocked down by truck No.GTX-3925. That truck No.GJ-3V-9330 also appears to have involved itself in the accident, as it is indicated that it hit the rear portion of truck No.GTX-3925. The tribunal concluded that both the vehicles are involved in the accident and therefore, driver, owner and insurer of both the vehicles would be liable to pay interim compensation of Rs.50,000/- to the claimants. The insurer of the second truck i.e. GJ-3V-9330 has therefore, preferred this appeal.

3.It appears that Rs.25,000/- was deposited with this Court and remaining amount of the award was deposited with the tribunal. The amount deposited with this Court has been transmitted to the tribunal.

4.By order dated 9/5/2005, a Notice for final disposal was issued to the respondents. The said Notice has been served on all the respondents. The respondents No.1, 2, 4 and 5 have chosen not to contest this appeal. The respondent No.6, the owner of the truck No.GTX-3925, is represented by learned Advocate Ms.Kiran Pandey. It transpires from Para No.10 of the main Claim Petition that as per the claimant, the deceased was knocked down by and crushed under the truck No.GTX-3925. It also transpires therefrom that truck No.GTX-3925 and truck No.GJ-3V-9330 both collided with each other. But, it does not appear clearly as to whether the collision between the two trucks was first or collision between the deceased and truck No.GTX-3925 was first.

4.1 From the copy of F.I.R., furnished by the learned Advocate for the appellant, it transpires that it is lodged by one Amriben wife of Mepabhai Zapada, who is an eye-witness to the incident. The tenor of the F.I.R., prima-facie, indicates that first Valiben was knocked down by truck No.GTX-3925 and at that time other truck dashed against the said truck from behind.

4.2 The panchnama of the place of incident indicates

that there were blood marks on the wheels of truck No.GTX-3925, besides pieces of flesh and bones caught between the left side rear wheels of the said truck. The panchanama also indicates that there was no damage to truck No.GTX-3925. However, there were two dent marks on the left front side of the truck No.GJ-3V-9330 and damage to the cabin on two places. There were brake marks of length of about 10 feet on the road.

5. Thus, it is a question whether truck No.GTX-3925 was first dashed from behind truck No.GJ-3V-9330 and then, truck No.GTX-3925 ran over the deceased and / or whether truck No.GTX-3925 ran over the deceased and then was dashed behind back by truck No.GJ-3V-9330. It would also be a question of evidence whether, if the collision between the trucks was the first event, the impact was so heavy, which could have resulted into truck No.GTX-3925, running over the deceased. All these questions can be determined only after the parties lead their respective evidence. At this stage, it is a question whether truck No.GJ-3V-9330, the insurer of which has preferred this appeal, can be said to have been involved in the accident, resulting in death of the deceased. Thus, at this stage, it is

not a question of negligence but, it is a question of involvement of the vehicle in the accident in question. The order impugned in this appeal does not deal with these questions, and therefore, cannot be permitted to stand, in so far as it relates to vehicle No.GJ-3V-9330. Appeal deserves to be allowed to that extent and the same is allowed. The judgment and award in question stands modified to the extent that driver, owner and insurer of truck No.GJ-3V-9330 would stand exonerated from liability under the award in question passed in exercise of powers under Section 140 of the Motor Vehicles Act, 1988.

6. It is however, clarified that this judgment allowing the appeal, may not be taken to mean that this Court has given a finding that said truck No.GJ-3V-9330 is not involved in the accident or that there was no negligence on the part of driver of said truck No.GJ-3V-9330. The tribunal would decide main Claim Petition strictly on merits without being influenced by any observations made by this Court in this judgment while allowing the appeal.

7. It is also clarified that it would be open for the appellant to withdraw the amount deposited and lying

with the tribunal. Appeal is accordingly allowed. No costs.

(A.L.DAVE, J.)

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